TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~463.~~ 228 45

ROBERT S. STEVENS, PLAINTIFF IN ERROR,

vs.

PELAGIE DE AUBRIE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

FILED APRIL 22, 1869.

SUPREME COURT OF THE UNITED STATES.

No. 463.

ROBERT S. STEVENS, PLAINTIFF IN ERROR,

vs.

PELAGIE DE AUBRIE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

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1 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the hon. the judges of the supreme court of the State of Kansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decission could be had in the said suit between Pelagie De Aubrie, plaintiff, and Robert S. Stevens, defendant, wherein was drawn in question the construction of a treaty and also a statute of the United States, and the decission was against the right, title, and authority specially set up and claimed under such treaty and statute, a manifest error hath happened, to the great damage of the said Robert S. Stevens, as by his complaint appears; we being willing the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be therein given, that then,

2 under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday of December next, in said Supreme Court to be then and there held, that the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the 8th day of January, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] A. S. THOMAS,
Clerk of U. S. Circuit Court District of Kansas.

(Indorsed:) Robert S. Stevens vs. Pelagie De Aubri. Writ of error. Filed Jan'y 8th, 1869.

E. B. FOWLER, *Clerk.*

3 UNITED STATES OF AMERICA, *ss:*

To Pelagie De Aubri:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Kansas, wherein Robert S. Stevens is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel A. Kingman, chief justice of the

supreme court of the State of Kansas, this 8th day of January, in the year of our Lord, 1869.

SAMUEL A. KINGMAN.

(Indorsed:) Robert S. Stevens vs. Pelagie De Aubri. Citation. Filed Jan'y 9, 1869.

E. B. FOWLER, *Clerk.*

4 STATE OF KANSAS, *Shawnee County, ss:*

Wilson Shannon, being first duly sworn, deposeth and saith, that on the 9th day of January A. D. 1869, he delivered to David Brockway, esq., one of the attornis of record for the within-named Pelagie De Aubrie, defendant in error, a true copy of the within citation, and at the same time exhibited to him the within citation.

WILSON SHANNON.

Sworn to and subscribed before me this 9th day of January, 1869.

[SEAL.] E. B. FOWLER,
Clerk Supreme Court State of Kansas.

5 Be it remembered, that on the 6th day of January, A. D. 1864, R. S. Stevens filed in the clerk's office of the supreme court of the State of Kansas, a petition in error, wherein Pelagie De Aubri was defendant; which said petition is in words and figures following, to wit:

State of Kansas, Shawnee county, district court.

ROBERT S. STEVENS, plaintiff,
vs.
PELAGIE DE AUBRI, defendant. } Petition in error Supreme court.

The said Robert S. Stevens, plaintiff, complains of the said Palagu De Aubri, defendant, for that the said Pelagie De Aubri at the November term of the dist. court, A. D. 1863, sitting in and for said county of Shawnee, recovered a judgment against the said plaintiff, by the consideration of said court in a certain action then pending in said court, wherein the said Pelagu De Aubri was plaintiff, and the said Robt. S. Stevens was defendant; a copy of the record of said judgment and proceedings in which case, duly certified, is hereto attached, marked A, & made a part of this petition; and the
6 said Robert S. Stevens avers that there is error in the said record & proceedings in this, to wit:

1st. The court erred in rejecting the deed from the said Pelagie De Aubri to the said Robert S. Stevens, for the premises described in the petition.

2nd. That the said judgment was given for the said Pelagie De Aubri, when it ought to have been given for the said Robert S. Stevens, according to the law of the land.

The said Robert S. Stevens therefore prays that said judgment may be reversed and the said plaintiff restored to all things he has lost by reason thereof.

WILSON SHANNON,
Attorney for Pl'ff in Error.

We hereby waive the issuance & service of summons in the above-entitled action, and hereby make a volentary appearance therein.

J. & D. BROCKWAY,
Att'ys for Defendant in Error.

7 PELAGIE DE AUBRIE } vs. ROBERT S. STEVENS. } 529.

Be it remembered, that on the second day of March, in the year of our Lord one thousand eight hundred and sixty-three, the said plaintiff filed in the clerk's office of the district court within and for Shawnee county in the third judicial district of the State of Kansas, her certain petition in the words and figures following, to wit:

District court, Shawnee county, State of Kansas.

PELAGIE DE AUBRIE, pl'ff, vs. ROBERT S. STEVENS, d'f't. } Petition.

The said Pelagis De Aubrie, plaintiff, complains of the said Robert S. Stevens, defendant, for that the said plaintiff is the owner in fee simple of, and has a real estate in, the following-described real property, to wit: The northwest quarter of section or reserve number five of the lands known as the Kansas half-breed Indian lands, situated in the said county of Shawnee and State of Kansas, consisting of one hundred and sixty acres of land, and the said is entitled to the possession thereof; and the said defendant unlawfully keeps the said plaintiff out of possession of the said real property.

Wherefore the said plaintiff claims judgment against the said defendant for the delivery of the possession of the said premises
8 to the said plaintiff, and also for the costs of this action.

J. & D. BROCKWAY,
Attorneys for Plaintiff.

Upon which are the endorsements in words and figures following, to wit:

Pelagie De Aubrie vs. Robert S. Stevens.
Petition filed March 2nd, 1863.

H. McARTHUR, *Clerk*,
By J. B. WHITTAKER, *Deputy*.

Precipe.

And, on the same day, to wit, on the 2nd day of March, A. D. 1863, was filed in the clerk's office of the court aforesaid, a certain precipe which is in the words and figures following, to wit:

District court, Sharnee county, State of Kansas.

PELAGIE DE AUBRIE, pl'ff,
vs.
ROBERT S. STEVENS, def't. } Precipe.

The clerk of the said court will issue a summons in this action against the said Robert S. Stevens, directed to the sheriff of Shawnee county, returnable according to law.

J. & D. BROCKWAY,
Att'ys for Pl'ff.

Upon which are the endorsements in words and figures following, to wit:

Pelagie De Aubrie vs. Robert S. Stevens. 529. Precipe.
Filed March 2nd, 1863.

H. MCARTHUR, *Clerk*,
By J. B. WHITTAKER, *Deputy*.

Summons.

And on the same day, to wit, on the 2nd day of March, A. D.
9 1863, was issued out of the clerk's office of the court aforesaid, a certain summons in vords and figures following, to wit:

UNITED STATES OF AMERICA,
Stete of Kansas, Shawnee county, ss:

The State of Kansas to the sheriff of Shawnee county, greeting:

You are hereby commanded to notify Robert S. Stevens that he has been sued by Pelagie De Aubrie in the district court within and for the county of Shawnee in the third judicial district of the State of Kansas, sitting for the trial of causes arising under the laws of the State of Kansas, and that unless he answers by the first day of April, A. D. 1863, the petetion of the said Pelagie De Aubrie against him, filed in the clerk's office of the court aforesaid, such petetion will be taken as true and judgment rendered accordingly. You will make due return of this summons on or before the 12th day of March, A. D. 1863.

Witness my hand and private seal, (there being no public seal provided,) affixed at my office, in the city of Topeka, this 2nd day of March, A. D. 1863.

[L. S.]

H. MCARTHUR, *Clerk*,
By J. B. WHITTAKER, *Deputy*.

[U. S. R. S.]

Upon which are the endorsements in words and figures following, to wit:

10 D. C. S. C. No. 559. Pelagie De Aubrie vs. Robert S.

Stevens. Summons issued March 2nd, 1863. Returnable March 12th, 1863. J. & D. Brockway, atty's for pl'ff.
Filed March 7th, A. D. 1863.

H. McARTHUR, *Clerk*,
By J. B. WHITTAKER, *Deputy*:

Received this writ this 2nd day of March, A. D. 1863, at 3 of the clock p. m.

A. H. HALE, *Sheriff*.

I executed this writ this 2nd day of March, A. D. 1863, by delivering to the defendant, Robert S. Stevens, a true and certified copy of this summons, in person.

A. H. HALE, *Sheriff*.

Fees & service, 75; 1 mile, 10—$0 85.

Answer.

And afterwards, to wit, on the 18th day of March, A. D. 1863, was filed in the clerk's office of the court aforesaid a certain answer in words and figures following, to wit:

State of Kansas, Shawnee county, district court.

PELAGIE DE AUBREY
vs.
ROBERT S. STEVENS. } Answer of def't.

Now comes the said Robert S. Stevens, defendant, and for answer to the petetion of the said Pelagie De Aubrey saith, that the Pelagie De Aubrie is not the owner, in fee simple, and has no real estate in the lands and tenements in her said petition described, in manner and form as therein set forth; and of this he puts himself upon the county.

ROBERT S. STEVENS,
By WILSON SHANNON, *His Att'y*.

11 Upon which are the endorsements in words and figures following, to wit:

Plagie De Aubrie vs. Robert S. Stevens. 529. Answer. Wilson Shannon.
Filed March 18th, 1863.

HIRAM McARTHUR, *Clerk*.

And afterwards, to wit, on the 23rd day of May, A. D. 1863, at the May term of the court aforesaid, among others were had the following proceedings, to wit:

PELAGIE DE AUBRIE
vs.
ROBERT S. STEVENS. } 529.

And now comes the said plaintiff, by J. & D. Brockway, her attorneys, and also comes the said defendant, by Elmore & Shannon, his

attorneys, and the issues being joined between the parties, and the parties being ready for trial, comes jury, to wit: R. Galt, L. J. Atwood, William H. Morgan, John Porter, Peter Keyes, Peter Spangler, William Flesher, Daniel Gilson, Isaac Renfro, Lysamius Wood, and S. D. McDonald, and Hiram Shields, twelve good and lawful men of the body of the county of Shawnee, who, being duly sworn to try the issues herin joined between the parties, and who, upon hearing the proofs and allegations by the parties submitted, and being charged by the court, rendered to the court the following verdict, to wit:

PELAGIE DE AUBRIE
vs.
ROBERT S. STEVENS. } District court Shawnee county.

We, the jurors in this cause, find for the plaintiff.

HIRAM SHIELDS, *Foreman.*

12 Now, therefore, it is considered and adjudged by the court now here, that the said plaintiff, Pelagie De Aubrey, recover of the said defendant, Robert S. Stevens, the lands and tenements in said plaintiff's petetion described, to wit: The northwest quarter of section or reserve number five of the lands known as the Kansas half-breed Indian lands, situated in the said county of Shawnee and State of Kansas, and her costs herein expended, and that the said plaintiff have possession of said premises; and hereof let excution issue.

And afterwards, to wit, on the 16th day of June, A. D. 1863, at the May term of the court aforesaid, among others were had the following proceedings to wit:

PELAGIE DE AUBRIE
vs.
ROBERT S. STEVENS. } 529.—Motion for a new trial.

And now comes the said defendant, and moves the court for a new trial in the above-entitled cause.

ROBERT S. STEVENS, *Defendent.*

And afterwards, to wit, on the 18th day of November, A. D. 1863, at the November term of the court aforesaid, among others were had the following proceedings, to wit:

PELAGIE DE AUBRIE
vs.
ROBERT S. STEVENS. } 529.

13 And now comes the said plaintiff, by J. & D. Brockway, her attorneys, and also comes the said defendant, by Shannon & Shannon, his attorneys, and the issues being joined herein, and the parties being ready for trial, comes a jury, to wit: Isaac Renfro, Peter Heil, F. P. Baker, B. A. Murphy, John W. Brown, Jacob Willets, Thomas McGuire, William P. Roberts, Lysiamus Wood, Adam Boner,

Nathaniel L. Williams, and William Sharp, twelve good and lawful men of the body of the county of Shawnee, who, being duly sworn to try the issues herein joined between the parties, and who, upon hearing the proofs and allegations by the parties submitted, and being charged by the court, return into court, without leaving the jury-box, the following verdict, to wit:

In the district court Shawnee county.

PELAGIE DE AUBRIE }
vs.
ROBERT S. STEVENS. }

We, the jurors, find in this cause for the plaintiff.

LYSAMIUS WOOD, *Foreman.*

Now, therefore, it is considered by the court now here, that the said plaintiff, Pelagie De Aubrey, recover of the said defendant, Robert S. Stevens, the lands and tenements in said plaintiff's petetion described, to vit: The northwest quarter of section or reserve number five of the lands known as the Kansas half-breed Indian lands, situated in the said county of Shawnee and State of Kansas, consisting of one hundred and sixty acres of land, and her costs herein expended,
14 and that the said plaintiff have possession of said premises; and hereof let execution issue.

And afterwards, to wit, on the 27th day of November, A. D. 1863, was filed in the clerk's office of the court aforesaid a certain bill of exceptions in words and figures following, to wit:

State of Kansas, Shawnee county, district court.

PELAGIE DE AUBRIE }
vs.
ROBERT S. STEVENS. }

Be it remembered, that on the trial of this cause in the district court, sitting in and for the said county of Shawnee, at the November term thereof, A. D. 1863, the counsel for the said defendant admitted that the plaintiff is the same person named as reserved or reserve or section number five in the 6th article of the treaty made and concluded at the city of St. Louis, in the State of Missouri, on the 3rd day of June, A. D. 1825, between the United States of America and the Kansas nation of Indians; and by agreement of counsel, as well for the said plaintiff as said defendant, said treaty was admitted as evidence to the jury; and it was further admitted by the attorney for the said defendant that the premises described in said petition are part and parcel of the said reserve or section number five named in the 6th article of said treaty, and that said plaintiff was in possession of said premises on the 14th day of August, A. D.
15 1860; wherefore the said plaintiff rested her case.

The said defendant, to maintain the issue on his part, then produced in court, and offered in evidence, a deed, signed and sealed by Amable Flancoan De Aubrie and Pelagie De Aubrie, his wife, and dated on the 14th day of August, A. D. 1860, and duly acknowledged on the same day by each of said grantors, before Jacob Safford, a notary public in the said county of Shawnee, and attested by his notarial seal; which acknowledgment is the same day and year last aforesaid; which deed purported to convey to the said defendant, the said premises in the said petition described for the consideration of eight hundred dollars, the receipt of which is acknowledged in said deed. It was also agreed, by the counsel for the said plaintiff, that the said Pelagie De Aubrey, one of the grantors in said deed to the said defendant, is the same person with the said plaintiff; and it was further agreed by the counsel for the said plaintiff and said defendant, that an act of Congress, repealing part of the last-named act, passed on the 17th day of July, A. D. 1862, should be considered in evidence in this case; whereupon the said plaintiff, by his attorney, objected to said deed going in evidence to the jury, on the ground that at the time of the execution and delivery thereof as aforesaid, the said plaintiff had no legal right or authority
16 under the treaty and laws of Congress above referred to, to convey said premises in said deed described to the said defendant, and had no right or legal power to alienate the same; which objection of the said plaintiff to the said deed being read in evidence, was sustained by the court, and the same was excluded from the jury by the court.

To which ruling of the said court, the said defendant, by his attorney, then and there excepted, and prayed that his bill of exceptions in that behalf might be allowed, which is accordingly done.

And on motion of the said defendant, made a part of the record in this case. November term, A. D. 1863.

JACOB SAFFORD, *Judge.*

Upon which are the endorsements in words and figures following, to wit:

Pelagie De Aubrie vs. Robert S. Stevens. 529. Bill of exceptions.

Filed Nov. 23rd, 1863.

HIRAM McARTHUR, *Clerk.*

STATE OF KANSAS, *Shawnee County, ss:*

I, Hiram McArthur, clerk of the district court within and for the county of Shawnee and State of Kansas, do hereby certify that the foregoing is a true copy of the papers and transcript of the record in the above-entitled cause, as the same now remains on
17 file and of record in my office.

Witness my hand and the seal of said court, affixed at my office, in the city of Topeka, this 5th day of January, A. D., 1864.

[SEAL.] HIRAM McARTHUR, *Clerk.*

18 And on the 15th day of January, A. D. 1864, the following proceedings were had, to wit:

Supreme court State of Kansas.

ROBERT S. STEVENS
vs.
PELAGIE DE AUBRI.

This cause coming on to be heard on the petition in error, and a transcript of the record of the dist. court of Shawnee county, and the argument of counsel being heard, as well for the plaintiff as defendant, the court decided that at the date of the said deed, in the bill of exceptions mentioned, from the said defendant in error to the said plaintiff in error, the said defendant had no right or legal authority to sell and convey the said premises in the petition of the said plaintiffs, below described, under the treaty made & concluded at the city of St. Louis, in the State of Missouri, on the 3d day of June, A. D. 1825, between the United States of America and the Kansas nation of Indians in Kansas Territory, passed the
19 26th day of May, A. D. 1860; and that said deed, from said defendant to the said plaintiff, is void, and that the same was rightfully rejected in the court below; whereupon the court find that there is no error in the proceedings and judgment of the court below, and the court do order and adjudge that the judgment of the court below be, and the same is hereby, confirmed, and the counsel for the plaintiff in error excepts to the ruling of the court, & prays that his exceptions may be noticed on the journals of this court, which is accordingly done by order of this court; and it is further considered and adjudged that the plaintiff in error, Robert S. Stevens, pay the costs herein, and that execution issue therefor.

20 And on the 8th day of January, A. D. 1869, the following bond was filed, in words and figures following, to wit:

Supreme Court of the United States.

ROBERT S. STEVENS
vs.
PELAGU DE AUBRI. } In error.

Know all men by these presents, that w and Wilson Shannon, are held & firmly bound unto the above-named Pelagie De Aubri in the sum of one hundred and fifty dollars, to be paid to the said Pelagie De Aubri, her executors or administrators; to which payment, well & truly to be made, bind ourselves & each of us, jointly and severally, & our & each of our heirs, executors, & administrators, firmly by these presents.

Sealed with our seals, and dated this 8th day of January, A. D. 1869.

Whereas the above-named Robert S. Stevens hath procured a writ of error to the Supreme Court of the United States, to reverse

the judgment rendered in the above-entitled suit by the su-
21 preme court of the State of Kansas:

Now, therefore, the conditions of this obligations is such, that if the above-named Robert S. Stevens shall prosecute his said writ of error to effect, & answer to all damages & costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be & remain in full force & virtue.

[SEAL.] WILSON SHANNON.

Sealed & delivered in presence of—
E. B. FOWLER.

JANUARY 8, 1869.—The within bond examined & approved of by me.

SAMUEL A. KINGMAN,
Chief Justice.

Filed Jan'y 8th, 1869.

E. B. FOWLER, *Clerk.*

22 And also on same day, to wit, 8th day of January, A. D. 1869, the following writ of error was filed, & still remains on file, in words & figures following, to wit:

THE UNITED STATES OF AMERICA, *ss*:

The President of the United States to the hon. the judges of the supreme court of the State of Kansas, greeting:

Because in the record & proceedings, as also in the rendition of the judgment of a plea which is in said supreme court before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Pelagie De Aubri, plaintiff, & Robert S. Stevens, defendant, wherein was drawn in question the consideration of a treaty, & also a statute of the United States, & the decision was against the right, title, & authority, specially set up & claimed under such treaty & statute, a manifest error hath happened to the great damage of the said Robert S. Stevens, as by his complaint appears.

23 We, being willing that the error, if any hath been, should be duly corrected, & full & speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be therein given that then, under your seal, distinctly & openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday of December next, in said Supreme Court, to be then & there held, that the record of proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error, what of right, & according to the laws & customs of the United States, should be done.

Witness the Hon. Salmon P. Chase, Chief Justice of the said Supreme Court, the 8th day of January, in the year of our Lord one thousand eight hundred & sixty-nine.

[SEAL.] A. S. THOMAS,
Clerk U. S. Circuit Court District of Kansas.

Which said writ was endorsed as follows:

24 *Endorsement.*

"Copy of writ of error, loged in pursuance of the statute in such case made & provided, for the above-named Pelagie De Aubri.

"WILSON SHANNON,
"*Att'y for Plaintiff.*"

Filed January 8th, 1869.

E. B. FOWLER, *Clerk.*

STATE OF KANSAS, *Supreme Court, ss:*

In obedience to the command contained in the within writ, I, E. B. Fowler, clerk of the supreme court of the State of Kansas, herewith forward to the Supreme Court of the United States, held at Washington, a full, true, and complete transcript of the record and proceedings in the case of Robert S. Stevens, plaintiff in error, vs. Pelagie De Aubri, defendant in error, as fully as the same remains of record & on file in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court. Done at office in Topeka, this 11th day of January, A. D. 1869.

[SEAL.] E. B. FOWLER, *Clerk.*